

April 7, 2020

Delaware Governor Issues Emergency Order Permitting Notice of Virtual-Only Shareholder Meetings by Exchange Act Filing and Press Release

Key Takeaways

- *An executive order allows Delaware public corporations, due to concerns arising from the COVID-19 pandemic, to re-notice or adjourn shareholder meetings as virtual-only meetings solely by a filing made under the Securities Exchange Act of 1934 (the “Exchange Act”) and a press release.*
- *The order provides needed relief to Delaware corporations that have already sent meeting notices and are unsure how to notice a change to a virtual-only format consistent with state law.*

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Yesterday, Delaware’s governor modified his Declaration of a State of Emergency (the “Order”) to assist public Delaware corporations that desire, as a result of concerns related to the COVID-19 pandemic, to hold annual or special shareholder meetings previously noticed for a physical location as virtual-only meetings instead. If a corporation is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, the board of directors may change a meeting currently noticed for a physical location to a virtual-only meeting by notifying shareholders solely by a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of the Exchange Act and a press release that is promptly posted on the company’s website after release. Similarly, if it is “impracticable” due to the COVID-19 pandemic to convene a shareholder meeting at its previously announced physical location, companies may adjourn the meeting to be held as a virtual meeting by providing notice in an Exchange Act filing and a press release promptly posted to the corporation’s website. The relief afforded by the Order applies only to corporations that had already noticed annual or special shareholder meetings as of the date of the order.

The Order brings Delaware in line with guidance issued by the SEC that allows public companies to notice changes in a meeting’s time, date or location via a supplemental proxy filing and a press release, among other conditions. The Delaware General Corporation Law, however, did not clearly permit Exchange Act reporting corporations to modify information set forth in their meeting notices without sending a new notice to shareholders. Importantly, the Order also contains a “savings clause,” which would eliminate any portion of the relief that ultimately is determined to be unenforceable under Delaware law. Therefore, sending a notice of changes to a meeting’s date, time or location is still advisable if circumstances permit.

For the Order, click [here](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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